

Tom Connelly

From: Tom Connelly
Sent: Friday, May 29, 2020 10:09 AM
To: Hooper, Michael
Cc: Rosemary Humway-Warmuth; Jeff Mauck (svwarwood@aol.com)
Subject: Traffic Study

Hello Mike,

I spoke with Paul Hicks and David Cramer of the WVDOT late yesterday afternoon to see if they had any initial feedback on the TIS and neither had yet received it. Were you aware of that? I'll be sending the meeting materials out to the Commissioners later today and that is indicated in the staff report.

-Tom

Thomas Connelly, AICP
Assistant Director
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City of Wheeling
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Tom Connelly

From: Hooper, Michael <michael.hooper@obermayer.com>
Sent: Friday, May 29, 2020 3:45 PM
To: Tom Connelly
Cc: Rosemary Humway-Warmuth; Jeff Mauck (svwarwood@aol.com)
Subject: RE: Traffic Study

Tom,
As I have told you on the phone, the scope of the TIS that we have filed with the City was developed and expanded based on comments provided to our expert by the WVDOH. However, as to a review of the TIS by the WVDOH, we have already spoken with David Cramer at WVDOH about that. I also had told you that the WVDOH will not review a TIS without a Development Agreement in place. A Development Agreement is a final definitive agreement that commits both the state and the developer to certain costs, improvements and other requirements that would clearly be premature at this point since we have not made application for a final site plan approved by the City. The WVDOH does not distinguish between a hypothetical or conceptual site plan and a final site plan for its review and/or approval of a TIS. My client cannot enter into a Development Agreement with WVDOH based on a hypothetical or conceptual plan. Any changes made to the conceptual plan before seeking and obtaining final site plan approval will result in the need for a new TIS. We have been advised by Mr. Cramer that when we are at the stage of applying for final site plan approval and corresponding Highway Occupancy or Signalization Permits, the TIS must then correspond more or less exactly to that final plan. Again at that point, there will be a signed Development Agreement in place with the WVDOH. At some later date, well into the future, when it is possible to make application for a final site plan approval based on known specific users, a new TIS will have to be performed and the applicant will enter into a Development Agreement with WVDOH for the review of same.

We have no objection to the City requesting any third party to review the TIS, including the WVDOH. However, GC&P Development LLC cannot meet the WVDOH requirement of a Development Agreement at this time nor is there any requirement by WVDOH to review the TIS at this time because there is no imminent request from the applicant to enter WVDOH facilities with a specific, final and City approved plan of development.

This is a unique situation and my client has accommodated your requests for information that far exceed what is usually required at this point in a development and at great cost to my client. However, it is premature and imprudent at this point in the process to enter into a Development Agreement with the WVDOH that binds my client and the WVDOH based on a conceptual plan for a development prior to the City having approved the land use and an application for final site plan approval has received preliminary approval from the City, subject to WVDOH final approval.

I am happy to discuss this with you in more detail if you would like.

Best regards.
Mike

Tom Connelly

From: Tom Connelly
Sent: Monday, June 1, 2020 9:46 AM
To: Cramer, David E
Cc: Rosemary Humway-Warmuth; Jeff Mauck (svwarwood@aol.com)
Subject: FW: Traffic Study

Hello Mr. Cramer,

In follow up to our conversation last week, I inquired of Mike Hooper who represents GC&P LLC if he was aware the Traffic Impact Study (TIS) hadn't yet been submitted to the WVDOT for their review and comment. Please see his response below. His response contains information that is different than I recall from the phone conversation you and I had. It was my understanding the WVDOT would review the Traffic Impact Study (TIS) when it is submitted along with the deposit and the Agreement, however the Agreement was not binding the developer to making the improvements unless they moved forward with the "Preferred Development Plan". (The "Preferred Development Plan" has been used as the basis for public comments, City departments to determine capacity and potential upgrades to support the development, and the city's geotechnical engineering review.) I have been requesting the applicant have the WVDOT comment on the proposed development for several years, and it has also been included in nearly every staff report and discussed on the record at our meetings. Can you please clarify the WVDOT TIS review process, what is required to be submitted, what that binds the applicant to doing, and any other clarifications to the email below.

I'm also including this link to an August 2019 letter I sent you that contained questions the Commission would find helpful to have the answers to and the letter from the applicant describing the project, including reference to improvements and a feasibility letter: <https://www.wheelingwv.gov/media/Economic%20Development/GCP/october2019materials/Set%201%20DOH.pdf>

The Planning Commission's next meeting is Monday, June 8, 2020 and it would be helpful to have any information you could provide before then.

Thank you,

-Tom

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Tom Connelly

From: Cramer, David E <David.E.Cramer@wv.gov>
Sent: Monday, June 1, 2020 10:11 AM
To: Tom Connelly
Cc: Rosemary Humway-Warmuth; Jeff Mauck (svwarwood@aol.com)
Subject: RE: [External] FW: Traffic Study

This is Paragraph I of our standard Developer agreement, including the agreement we transmitted to GC&P a few months ago:

1. If Developer elects, in Developer's sole discretion, to proceed with the Development, Developer shall first obtain Division's approval, as set forth herein. regarding the proposed activities Developer desires to implement within or which directly or indirectly affect the State Highway System. Developer acknowledges that execution of this Agreement does not constitute Division's approval of any part of Developer's proposed work or Division's Notice to Proceed. Further, Developer acknowledges that any work performed by Developer, including work solely within Developer's property, prior to receipt of Division's approval and notice to proceed, is performed by Developer at its sole risk and that subsequent review by Division of Developer's plans and studies may require that modifications be performed by Developer at no cost to Division.

As I mentioned on the phone, the agreement requires the Developer to obtain DOH approval of TIS and Plans pertaining to the State Highway System before implementing any work within our right-of-way. The DOH reviewed and provided Feb 5 concurrence with a proposed scope of a TIS (which concurrence is required per our Traffic Engineering Directive 106-2). We notified the Developer April 9 that the agreement needs to be executed and the deposit provided to DOH before submission to DOH of a TIS. We have indicated to Developer that DOH approval of a TIS is necessary to determine the scope of modifications necessary to mitigate the impact on the State Highway System and that the recommendations of the approved TIS are to be incorporated into the Plans, which also need to be approved by the DOH. The Developer would implement the highway modifications after DOH provides approval of the Plans and the Developer has obtained the necessary permit from DOH. We noted to the Developer that if the Development plan changes, the previously approved scope of the TIS DOH provided no longer may be valid, and at the time the Developer wants to proceed with the DOH reviews, we then will need to review a proposed scope of the Development and possibly a new scope of a TIS (depending on changes made to the site development proposal since the time we previously provided approval of TIS scope).

If additional information is needed, let me know.

David E. Cramer, PE
West Virginia Department of Transportation
Commissioner's Office of Economic Development
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304-414-6697
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Tom Connelly

From: Tom Connelly
Sent: Monday, June 1, 2020 2:12 PM
To: Cramer, David E
Cc: Rosemary Humway-Warmuth; Jeff Mauck (svwarwood@aol.com)
Subject: [External] FW: Traffic Study

Mr. Cramer,

Thank you for the information regarding the standard developer agreement. I'd like to send this summary of your email to the Commissioners along with your thoughts on the questions below. Please let me know if this summary is accurate:

1. If the developer elects to move forward with the development they need the DOH's approval of the TIS, plans and agreement before beginning work in the ROW.
2. If the developer performs work on private property, it would be at their own risk as DOH could make modifications to required improvements in the ROW.
3. The execution of the Agreement does not constitute DOH's approval or notice to proceed.
4. If the development plan changes, the previously approved TIS may no longer be valid and that at the time the developer wants to proceed with the project, the DOH would re-review and possibly issue a new scope of a TIS, depending on the changes.

Also, would the "costs, improvements and other requirements" in the Development Agreement Mr. Hooper is referring to only be bound on his client if the project moves forward? From his May 29, 2020 email: "A Development Agreement is a final definitive agreement that commits both the state and the developer to certain costs, improvements and other requirements that would clearly be premature at this point since we have not made application for a final site plan approved by the City."

Phase 1 of the proposed land development includes three phases of improvements to the Oglebay Corridor Improvement & Access; however only the first phase was included in the TIS. Does that mean before Phases 2 and 3 of the corridor improvement can be made another TIS would be required? (This is outlined on page 3 of the applicant's July 29, 2019 letter.)

Finally, with regard to the TIS, I anticipated serious consideration be given to the increased traffic levels between November and January when Oglebay's festival of lights is operating, which can sometimes stack traffic onto Interstate 70 on the weekends. The TIS references anticipated traffic volume increases due to Oglebay's events, but did not include any impact on the development.

I appreciate your time on this and any other information or thoughts you have for the Planning Commission to consider. Please let me know if there was any other information you can offer from the August 2019 letter I sent you and linked in my earlier email. All of the application information can be found here: www.wheelingwv.gov/gcp

Thank you,

-Tom

Thomas Connelly, AICP
Assistant Director
Economic & Community Development Department
City of Wheeling
1500 Chapline Street, Room 305

Tom Connelly

From: Cramer, David E <David.E.Cramer@wv.gov>
Sent: Wednesday, June 3, 2020 11:11 AM
To: Tom Connelly
Cc: Rosemary Humway-Warmuth; Jeff Mauck (svwarwood@aol.com)
Subject: RE: [External] FW: Traffic Study

I've tried to address below each of the items in your message. If additional information is needed, let me know.

Dave

From: Tom Connelly <tconnelly@wheelingwv.gov>
Sent: Monday, June 1, 2020 2:12 PM
To: Cramer, David E <David.E.Cramer@wv.gov>
Cc: Rosemary Humway-Warmuth <rhwarmuth@wheelingwv.gov>; Jeff Mauck (svwarwood@aol.com) <svwarwood@aol.com>
Subject: [External] FW: Traffic Study

Mr. Cramer,

Thank you for the information regarding the standard developer agreement. I'd like to send this summary of your email to the Commissioners along with your thoughts on the questions below. Please let me know if this summary is accurate:

1. If the developer elects to move forward with the development they need the DOH's approval of the TIS, plans and agreement before beginning work in the ROW.
For the scope of the development presented to the DOH by the Developer, a TIS would be necessary. Any recommended highway modifications pertaining to the DOH that would be part of the approved TIS would need to be incorporated into the Developer's plans, and those plans pertaining to the State Highway System would have to be approved by the DOH prior to commencement of work in our right-of-way. For large development projects, the DOH utilizes an agreement that addresses generally the project. Since the agreements are executed early in the development project process, the scope of highway modifications are unknown at the time of agreement and the terms of the agreement indicate only generalizations of scope (e.g., construction of access, modifications along a certain roadway), with the detailed plans that would be developed later (if project is advanced by Developer) identifying the specific work. Developer needs to obtain from DOH also an encroachment permit for the work proposed prior to commencing construction in our right-of-way, and as part of the permit, a bond is required from the applicant (amount of bond determined at permitting and is reflective of work proposed along State Highway System); approval by DOH of the Plans is necessary prior to issuance by DOH of an encroachment permit. Utility permit(s) also may be necessary depending on the work proposed within our right-of-way.
2. If the developer performs work on private property, it would be at their own risk as DOH could make modifications to required improvements in the ROW.
The DOH can permit work only within our right-of-way. The Developer can perform work outside DOH right-of-way (although permits/approvals from other governmental entities still may be necessary first) but any work performed within the site prior to DOH approval of Plans is subject to potential modification by the Developer, if necessary to address DOH review comments concerning the Plans, such as comments we may have concerning grade of an access, slopes, drainage concerns, etc.
3. The execution of the Agreement does not constitute DOH's approval or notice to proceed.
Correct. Agreement describes the responsibilities of the parties if the Development is to be implemented by the Developer. The DOH must approve any proposed work within our right-of-way prior to that work being performed. Agreement outlines that process and the stipu

4. If the development plan changes, the previously approved TIS may no longer be valid and that at the time the developer wants to proceed with the project, the DOH would re-review and possibly issue a new scope of a TIS, depending on the changes.

The DOH concurred with the scope of a TIS that corresponds to a preliminary Development scope. That TIS would analyze the impact that Development would be anticipated to have on the State Highway System. If the Developer revises the Development scope substantially, the previously approved scope of the TIS itself then may no longer be valid. For instance, if the development scope changes a portion of the site to a higher trip generator (say, changing several single-family residential lots to a larger commercial area), then we would want the Developer to address that increase in trips as part of the analysis. If DOH approves a TIS and the development scope changes substantially in a manner that would be expected to increase the trips substantially and potentially have a greater impact, the DOH may request an updated TIS to determine the extent of additional modifications that may be necessary to address the increase. If the development scope reduces substantially after approval by DOH of a TIS (or scope of TIS), the Developer then may want to provide a new TIS since the highway modifications that were identified in the previous TIS (if appropriate) may be more than would be necessary for the "new" proposal. The time that passes between a previous TIS (particularly when the counts are obtained) and the implementation of the highway modifications potentially could result in an updated TIS being necessary, if the counts are "old."

Also, would the "costs, improvements and other requirements" in the Development Agreement Mr. Hooper is referring to only be bound on his client if the project moves forward? From his May 29, 2020 email: "A Development Agreement is a final definitive agreement that commits both the state and the developer to certain costs, improvements and other requirements that would clearly be premature at this point since we have not made application for a final site plan approved by the City."

The DOH will expect the Developer to implement the highway modifications necessary to mitigate the impact of the Development, as it pertains to the State Highway System. The scope of those modifications would be part of the TIS. The agreement does not require the Developer to proceed with any part of the Development, but does require the Developer to provide us with Plans and obtain our approval IF the Development, as presented to us, is to be implemented. The Developer could provide a TIS to DOH, obtain our review results and then determine not to move forward with the project; could address our review results, resubmit a revised TIS and then obtain our approval of a TIS and then Developer could elect to not move forward; or the Developer could do all that, submit Plans to us and eventually obtain our approval of the Plans and then elect not to move forward.

We include the following in our Developer agreements (and it is in the GC&P agreement); "Project" is defined in the agreement as the work to be implemented along the State Highway System:

Except as otherwise provided herein, Developer shall have no obligation to proceed with Project, the work required to modify an existing access, nor to construct a new access for any reason. Specifically, Developer shall have no obligation to proceed with the Project until funding acceptable to Developer has been secured; however, the operation or opening for business, by Developer or any other party, of any portion of Development shall not occur until Project has been constructed in accordance with the Plans and this Agreement to the satisfaction of Division.

Phase 1 of the proposed land development includes three phases of improvements to the Oglebay Corridor Improvement & Access; however only the first phase was included in the TIS. Does that mean before Phases 2 and 3 of the corridor improvement can be made another TIS would be required? (This is outlined on page 3 of the applicant's July 29, 2019 letter.)

The highway modifications resulting from the TIS would address the scope of the Development analyzed. If future development may be proposed but is not part of the TIS, then any future development proposal would need to be provided to the DOH so that we then can determine whether a TIS may be needed at that time. Future development phases are not permitted to be constructed within the site without first obtaining DOH approval, if the site access(es) constructed or modified as part of this Project/Agreement are to be used (and if new/other access is to be proposed for additional phases, the DOH would need to approve new access to our System also).

Finally, with regard to the TIS, I anticipated serious consideration be given to the increased traffic levels between November and January when Oglebay's festival of lights is operating, which can sometimes stack traffic onto Interstate 70 on the weekends. The TIS references anticipated traffic volume increases due to Oglebay's events, but did not include any impact on the development.

Typically a TIS analyzes "normal" anticipated traffic conditions and not event traffic. Generally the sponsor/owner of the special event is expected to provide a traffic management plan to address the event traffic.

I appreciate your time on this and any other information or thoughts you have for the Planning Commission to consider. Please let me know if there was any other information you can offer from the August 2019 letter I sent you and linked in my earlier email. All of the application information can be found here: www.wheelingwv.gov/gcp

The August 15, 2019, letter from the City includes reference to a July 29, 2019, letter to the City that states that the highway improvements associated with the Development "should be completed by the State with financial assistance and/or grants from the federal government and not by the Applicant." I am unaware of any commitment by the DOH to provide funding for the highway modifications that would be necessary only because of the private development. The agreement we provided to the Developer for signature stipulates that the Developer will implement at Developer expense the highway modifications.

Thank you,

-Tom

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Tom Connelly

From: Tom Connelly
Sent: Wednesday, June 3, 2020 11:48 AM
To: Cramer, David E
Cc: Rosemary Humway-Warmuth; Jeff Mauck (svwarwood@aol.com)
Subject: RE: [External] FW: Traffic Study

Thank you, I appreciate you going through and providing the in-depth explanation on each point.

We are going to have WVDEP Deputy Cabinet Secretary Scott Mandirola on Monday's Planning Commission Zoom meeting (5 p.m.) to review some of the DEP permit processes as there has been questions as to the types of permits the project may need from the DEP. The zoom call is not a public hearing, but is a public meeting that will be streamed on the city's Facebook page. I invite you to participate in a similar manner if you think providing the information to the Commission first hand would be more beneficial. The Commission is aware the results of the TIS have not been submitted to the WVDOT for comment and this would be procedural information to clear up any possible confusion. Let me know and I will send you the log-in information.

Thank you,
-Tom